

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DONALD JOSEPH WEST,

Petitioner,

v.

DOUGLAS DRETKE, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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2:04-CV-0090

**REPORT AND RECOMMENDATION TO DISMISS
PETITION FOR A WRIT OF HABEAS CORPUS**

Came for consideration the Petition for a Writ of Habeas Corpus filed by petitioner DONALD JOSEPH WEST. For the reasons set forth below, it is the opinion of the undersigned United States Magistrate Judge that the habeas petition be dismissed.

Petitioner, previously a state inmate who is now on early release to parole, submitted his habeas petition without any payment to satisfy the requisite filing fee or, in lieu of the filing fee, an application to proceed *in forma pauperis* with an affidavit of indigency. On April 20, 2004, petitioner was granted permission to proceed *in forma pauperis* temporarily, pending submission of an Application to Proceed *In Forma Pauperis* and an Affidavit of Indigency or, alternatively, receipt of the \$5.00 filing fee. Petitioner was warned the failure to properly supplement or pay the filing fee within the time allowed by this Order would result in a recommendation for the dismissal of this case without further notice. As of this date, petitioner has not complied with the Order by tendering the filing fee or seeking *in forma pauperis* status.

By the April 20, 2004 Order, petitioner was also advised that, based on a cursory review of the file, it appeared petitioner's habeas application would be dismissed without reaching the merits of the petition because: (1) the petition was abusive of the writ; (2) the petition was successive and petitioner lacked authorization to file his petition; (3) the petition was time barred by the statute of limitations; (4) his claim seeking good time credits was moot; (5) his claim seeking release was without merit; and (6) his claim of involuntary servitude was improper in a habeas corpus proceeding. The Court ordered that if petitioner wished to proceed with this 28 U.S.C. § 2254 petition, he was to file a pleading entitled "Response to Court's Order to Show Cause" setting forth, with specificity, the reasons why this case should not be dismissed for the above-stated and described reasons. Petitioner was warned that his failure to file such a pleading would result in the immediate recommendation that this cause be dismissed without further notice. As of this date, petitioner has not complied with the Order by filing any pleading showing cause why this case should not be dismissed.

As of this date, petitioner has not filed the required filing fee or the appropriate *in forma pauperis* documents, nor has he filed any pleading setting forth reasons why this case should not be dismissed. Petitioner is in direct disregard of the Court's Orders. Further, petitioner has not communicated with the Court with regard to this case. It is the opinion of the undersigned that petitioner has neglected his case to such an extent that it warrants dismissal.

RECOMMENDATION

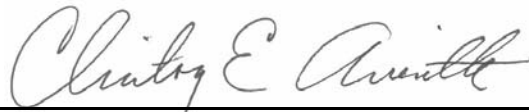
It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the application for a writ of habeas corpus filed by petitioner DONALD JOSEPH WEST be DISMISSED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a file-marked copy of this Report and Recommendation to petitioner utilizing the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 14th day of April 2006.



CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the file mark on the first page of this recommendation. Service is complete upon mailing, Fed. R. Civ. P. 5(b), and the parties are allowed a 3-day service by mail extension, Fed. R. Civ. P. 6(e). Therefore, any objections must be **filed on or before the fourteenth (14th) day after this recommendation is filed.** See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. See *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).